IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.501 OF 2007
IN
APPEAL FROM ORDER NO.349 OF 2007

Narayan N. Parab ...Applicant
Versus
The M.C.G.M. & Anr. ...Respondents

Shri J.G.Shukla i/by M/s.G.H.Shukla & Co for the Applicant.
Ms Geeta Joglekar for the Respondent No.1.
Shri A.S.Khatib for the Respondent No.2.

CORAM : ABHAY S.OKA, J.
DATED : MAY 03, 2007.

P.C.:

1. Heard Advocates appearing for the parties. The challenge in the suit filed by the Applicant/Appellant is to action under section 351 of the Bombay Municipal Corporation Act, 1888. The allegation in the notice issued under section 351 of the said Act is as regards extension of the ground floor and construction of first floor. In the reply submitted by the Appellant to the notice, the contention which is raised is that the structure subject matter of the notice has been in existence prior to 01st April, 1964.

2. Perusal of the documents produced by the Applicant/Appellant shows that in so far as the first floor is concerned, there is absolutely no material on record to show that the same existed before the datum

line. However, in so far as ground floor is concerned, there is some material on record which requires consideration. Therefore, though the Appeal is admitted, the interim relief will have to be confined to the structure of the ground floor and there cannot be any interim relief in so far as first floor is concerned. Hence, Application is disposed of by passing the following order:

(i) There will be an ad-interim relief in terms of prayer clause (a) which will apply only to the ground floor structure described in the notice dated 05th April, 2005 issued by the first Respondent-Corporation under section 351 of the Bombay Municipal Corporation Act, 1888.

(ii) Injunction is granted subject to condition that the Applicant will not carry out any additions or alterations to the ground floor structure without permission of this Court.

(iii) It is made clear that it will be open for the first Respondent to demolish the first floor which is subject matter of notice dated 05th April, 2005. If the Applicant/Appellant fails to demolish the first floor on his own within a

period of eight weeks from today, the first Respondent will be entitled to take action of demolition in respect of the first floor.

(iv) It is made clear that if any obstruction is raised by the Applicant/Appellant in demolition of the first floor, the Respondents will be at liberty to apply for vacating the interim relief which is granted in respect of the ground floor.

(v) No orders as to costs.

JUDGE